*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

<+ WRIT PETITION NO. 7935 OF 2007

% 31-10-2007

Gaaddampalli Jagpal Reddy and two others

...Petitioners

Versus

$ The District Collector, Nalgonda and five others

...Respondents.

! Counsel for the Petitioners: Mr. E.Madan Mohan Rao

^ Counsel for the Respondents1 to 4: Government Pleader for Cooperation

^ Counsel for the Respondent No.6: Mr.D.V.Bhadram

< Gist:

> Head Note:

? Cases referred:

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No.7935 of 2007

Date:31-10-2007

Between:

Gaddampalli Jagpal Reddy and two others

…Petitioners

AND

The District Collector, Nalgonda and (5) others

..Respondents

-

-

-

-

-

ORDER:

The petitioners question the proceedings No.252/07-B, dated 24.03.2007 of the 2nd respondent/Deputy Registrar of Co-operative Societies, Miryalaguda, Nalgonda District in deciding to convene a meeting for consideration of the motion of no-confidence on the President of Primary Agricultural Co-operative Society, G.Gowraram, Headquarters at Chintapally on the ground that the Managing Committee Members of the society submitted a representation regarding the no-confidence motion on 23.03.2007.

2. The first petitioner is the President of the Primary Agricultural Co-operative Society, G.Gowraram, at Chintapally (for short 'the Society') and the petitioners 2 and 3 are the Managing Committee Members of the Society (hereinafter called as 'the Committee'). It is stated that the elections were held to thirteen members committee on 23.10.2005 and the first petitioner was elected as its President on 24.10.2005.

3. It is the case of the petitioners that out of ten managing committee members who signed the requisition for consideration of motion of no confidence, two members were ceased to be the members of the committee and one of them is the

5th respondent/Smt.Gunireddy Ramchandramma who was elected as M.P.T.C. of Chintapally on 11.07.2006 and to that effect the President of the Mandal Praja Parishad, Chintapally certified that Smt.Gunireddy Ramachandramma wife of Pratap Reddy resident of Nelavalipally has been elected as MPTC of Teeded Pradeshika of Chintapally mandal on 04.07.2006 and she has taken oath on 11.07.2006 and still she is continuing as MPTC and therefore, the 5th respondent is ceased to be a member of the Committee. It is further stated that insofar as 6th respondent-Adithuni Laxmaiah member of the committee is concerned, it is stated that he has not attended any of the Committee meetings and therefore, as per Section 21-B of the A.P. Co-operative Societies Act (for short 'the Act) as he has absented himself from three consecutive meetings prior to 21.09.2007, he ceased to be a member of the Committee and therefore, the said two persons are not entitled to move or participate in the no-confidence motion as they have ceased to be the members of the Committee. It is further stated that the impugned motion of no-confidence proceedings, dated 24.03.2007 for convening the meeting for consideration of the no-confidence motion on 18.04.2007 was not served on the petitioners giving fifteen clear days. It is stated that the notice of no-confidence motion has to be served by giving or tendering to the members of the committee or by sending it by registered post to their address under Section 34-A(3) of the Act r/w Rule 24-A(2) (a) & (b) of the A.P. Co-operative Rules, 1964 (for short 'the Rules'). As fifteen clear days have not been given and as the said notice was not served, the petitioners contend that the motion of no-confidence cannot be carried on 18.04.2007.

4. This Court while issuing notice before admission on 17.04.2007 granted interim stay initially for a period of two weeks and it was

extended for a further period of six weeks by order, dated 01.05.2007. But, the fact remains that the motion of no-confidence has not been carried out till date.

5. The second respondent filed a counter stating that the elections were held to the managing committee of the Society in the month of October, 2005 and the first petitioner was elected as its President on 24.10.2005 and continuing as on date. With regard to the allegations made against the Secretary of the Society, it is admitted that certain disciplinary proceedings were moved against A.Ramulu, Secretary of the society. But, the said disciplinary proceedings are nothing to do with the motion of no-confidence moved against the President of the Society. It is stated that majority of members moved the motion of no-confidence. The disqualification said to have been incurred by the 5th respondent on the ground that she has been elected as MPTC on 04.07.2006 and taken oath on 11.07.2006, it is stated that no such representation or petition has been filed as such, it cannot be said that she ceased to be a member of the committee. It is stated that there is a procedure contemplated under the Act before passing disqualification orders. It is stated that no show cause notice calling for explanation for passing necessary orders has been issued and therefore, it cannot be said that the 5th respondent automatically disqualified and that she is not entitled to participate in the motion of no-confidence motion and she is ceased to be the member of the Managing Committee.

6. Insofar as the contention that 6th respondent ceased to be a member of the committee, a resolution has been passed on 29.01.2007 on the ground that he has failed to attend any meeting of the committee and for not attending the meeting of committee from

three consecutive meetings. It is stated that there was no such agenda to consider the disqualification on 29.01.2007 and therefore, there cannot be any resolution, but it is reliably learnt that issue of resolving that the respondents 5 and 6 are ceased to be the directors of committee was inserted in the blank column of resolution. If at all there is any such issue, prior notice should be given to both of them and after calling for explanation, the committee would pass a resolution. As per record, no such notices have been given to the respondents 5 and 6. That being so, the alleged resolution of the committee is nothing but manipulation and on this aspect necessary action has to be taken by conducting enquiry as to whether any of the persons have manipulated the minutes of the Society. Accordingly, it is stated that the contention of the petitioners that the respondents 5 and 6 are not entitled to move the motion of no-confidence nor entitled to participate in the proposed meeting cannot be sustained. With regard to the contention that the notice has not been served giving fifteen clear days on the petitioners. It is stated that on 23.03.2007 ten directors gave requisition to move the motion of no-confidence in the prescribed proforma in person and minimum two directors were present and the notice, dated 24.03.2007 to hold the meeting on 18.04.2007 was served on all the thirteen members of the committee on 30.03.2007 which is within the purview of Section 34-A(3) of the Act giving fifteen clear days notice to conduct the meeting of no-confidence motion on 18.04.2007. It is stated that as per the records, all the directors have received the notice, dated 24.03.2007 on 30.03.2007.

7. Though notice has been served on 5th respondent, she has not appeared either in person or through her counsel.

8. The 6th respondent filed a counter contending that the

disqualification for membership of Committee of 5th respondent as per Section 21-A(1B) of the Act cannot be automatic, but it has to be enquired into under Rule 24(3) of the Rules and orders have to be passed. As per the certificate, dated 14.03.2007 issued by the Mandal Parishad President, Chintapally stating that the 5th respondent was elected as MPTC and taken oath on 11.07.2007 and as such continuing till date, but so far no disqualification orders have been passed by any competent authority as per law and therefore, it cannot be said that she automatically ceased to be a member of the society merely because she was subsequently elected as MPTC. Insofar as the cessation of membership of the 6th respondent is concerned, it is stated that the resolution said to have been passed on 29.07.2007. It is not known as to whether the said meeting was conducted with quorum or not and admittedly

6th respondent did not attend the managing committee meeting on 29.07.2007. The allegations made against 6th respondent that he never attended the managing committee meeting after he was elected as managing committee member on 23.10.2007 was not at all denied in the counter. But, it is contended that unless a notice has been given giving reasonable opportunity and disqualification orders have been passed, the 6th respondent cannot be ceased to be a member of the committee. It is further stated that any resolution passed by the managing committee shall be approved by the general body and in the absence of any general body resolution, it cannot be said that the 6th respondent ceased to be a member of the committee.

9. A reply has also been filed by the petitioners to the counter of the second respondent stating that the 6th respondent did not take oath as

director and did not participate in any meetings in spite of the notice and resolution, dated 29.01.2007. The 6th respondent was issued a show cause notice, dated 15.12.2006 marking copies to all the concerned and resolution was passed on 29.01.2007, the copies of proceedings were sent to the respondents and therefore, the allegation that there was no agenda for issuance of disqualification for membership of committee in the said meting was not correct. The second respondent addressed a letter, dated 23.03.2007 to the M.D.O., Chinthapally to confirm whether the 5th respondent is continuing as M.P.T.C. As the respondents 5 and 6 ceased to be the members of the committee, they cannot participate or move no-confidence motion against the President as per the provisions of the Act and Rules made thereunder. It is further stated that the notice, dated 24.03.2007 was not at all served on the petitioners.

10. The questions that arise for consideration in this writ petition are:

i) Whether 5th respondent ceased to be a member of the managing committee under Section 21-A(1B) of the Act?

ii) Whether 6th respondent ceased to be a member of the managing committee under Section 21-B of the Act?

iii) Whether the notice of no-confidence motion was validly served on the petitioners on 30.03.2007?

11. Insofar as the disqualification for membership of the committee of 5th respondent is concerned, under Section 21-A (1B) of the Act, if the member of the managing committee of the society is elected as member or president of the Mandal Parishad, he shall ceased to be a member of the committee unless within fifteen days from the date on which he is elected to any one of such offices,

he ceased to hold such office by resignation or otherwise. If the member of the committee subsequently elected as member or Mandal Parishad, he shall ceased to be a member of the committee unless within fifteen days from the date on which he has elected to any one of such offices, he ceases to hold such office by resignation or otherwise.

12. The averments made in the writ petition that 5th respondent was elected as member of the managing committee on 23.10.2005 and that she elected as member of the Mandal Parishad on 04.07.2006 and that she has taken oath on 11.07.2006 and she was continuing as MPTC till 14.03.2007 as certified by the President of the Mandal Parishad, Chintapally have not been disputed or rebutted.

13. If the said facts are not in dispute, the further question that arises for consideration as to whether 5th respondent automatically ceases to be a member of the committee in the absence of any orders passed by any authority. The legal contentions with regard to automatic cessation of 5th respondent so also 6th respondent are similar.

14. With regard to cessation of the membership of 5th respondent is concerned, it is the case of the petitioners that after the election of 5th respondent as member of the managing committee, she subsequently elected as member of Mandal Parishad and 6th respondent never attended to any of the meetings from October, 2005 till 29.01.2007 and even subsequent thereto and on 29.01.2007 a resolution has been passed against both the respondents 5 and 6, that 5th respondent ceased to be a member of the managing committee as she has elected as MPTC on 04.07.2006 and taken oath on 11.07.2006 and continued as such till date and therefore, she ceased to be a member of the

managing committee under Section 21-A (1B) of the Act.

15. Insofar as the 6th respondent is concerned, a resolution has been passed stating that he ceased to be a member of the managing committee under Section 21-B of the Act as he absented himself from three consecutive meetings of the committee and accordingly resolution was passed on 29.07.2007.

16. Sri E.Madan Mohan Rao, learned counsel for the petitioners submits that Rule 24 of the Rules deals with disqualification for membership of committee. As per Rule 24 (3) of Rules the Chief Executive Officer or President where there is no Chief Executive Officer shall be responsible to keep a watch on disqualification of members or managing committees. Automatic disqualification of a member under Section 21(g) or the managing committee under Section 21AA(5) and 21AA(6), if orders are issued by Registrar under Section 21(e), the Chief Executive Officer shall report the status to Managing Committee under Section 21(f) and if the managing committee passes an order of disqualification, the President or the Chief Executive Officer, as the case may be, inform the Registrar and place a report on all such disqualification in the general body meetings for information as and when convened. Before passing a resolution under Rule 24 (3)(c) or (d) the committee of a society shall give such person an opportunity to state his objections if any, to the proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard and after passing orders of disqualification by the managing committee, such order shall be placed before the general body to declare that a person shall ceases to be a member of the committee of the society concerned from the date of the disqualification. It is stated that insofar as Rule 24 is concerned, it

does not deal with automatic cessation of the managing committee members, but such persons like respondents 5 and 6 ceases in view of the statutory provisions under Section 21-A (1B) and 21-B of the Act and therefore, it is contended that the rules do not contemplate passing of any specific order with regard to automatic cessation of any managing committee member or placing the said resolution of the managing committee before the general body to declare that they have ceased to be the members of the committee.

17. I am unable to accept the said contention for the reason that Section 21 of the Act deals with disqualification for membership of society, Section 21-A (1B) deals with cessation of the managing committee member, if he is elected as member of the legislative assembly or the parliament or municipal corporation or Zilla Parishad or Mandal Parishad or Gram Panchayat. If he is already a member of the committee, if he has elected subsequently, he shall ceased to be the member of the committee within fifteen days from the date of such election. Disqualification is automatic after expiry of 15 days from the date of his election. Section 21-A deals with disqualification for membership of committee and Section 21-B deals with cessation of membership and reinstatement. The question is whether disqualification or the cessation of the membership as contemplated under Section 21-A (1B) or 21-B is not automatic in the absence of any resolution or decision taken by the managing committee. Though there is automatic cessation of managing committee members of the society, immediately after expiry of 15 days of his election and where a member of the committee absents himself from three consecutive meetings of the committee, the cessation is automatic immediately after the third meeting of the committee, but that cessation of the

membership of the committee shall be reported to the managing committee and the managing committee shall take a decision. Section 31-A of the Act deals with powers and functions of the committee. The managing committee is empowered to recommend the admission of members and allotment of shares to members and transfer of shares to general body and recommend removal of the members disqualified under Section 21, recommend removal of any of the committee members disqualified under Sections 21-A, 21-AA, 21-B of the Act. Such recommendations of disqualification, cessation or reinstatement of a committee member who ceased to be such member of the committee shall be placed before the general body under Section 31-A (4) of the Act. After placing the recommendations of the managing committee in respect of the disqualified committee members or the ceased members of the committee, the general body has to take a decision under Section 30(2)(i) of the Act. The ultimate authority of society vests with the general body. Under Section 30(2) of the Act the general body is empowered to deal with election and removal of the members of the committee and members. Though the cessation of the managing committee membership is from the date of disqualification, but unless such cessation is reported to the managing committee and the managing committee passes a resolution recommending for removal of the ceased members and the general body deals with such matter and passes the resolution, I am of the opinion that the disqualification or cessation is not automatic.

18. In the instant case, the resolution passed by the managing committee on 29.01.2007 has to be placed before the general body and the general body shall deal with the said resolution of the managing committee, dated 29.01.2007 with regard to cessation of

membership of the respondents 5 and 6 to the managing committee of the society.

19. Insofar as the service of the notice of no-confidence motion is concerned, it has to be seen whether there was any valid service of notice on the petitioners. The notice of no-confidence motion has to be served under Rule 24-A (2) of the Rules by giving or tendering it to such person or by sending it by registered post to their address.

20. In the instant case, it is the specific case of the petitioners that the notice, dated 24.03.2007 has not at all been served. But, as per the counter of the respondents, a special messenger served the notice on 30.03.2007. A perusal of the records goes to show that the first petitioner who is the President of the society refused to receive the notice and therefore, the said notice was affixed on the door of the first petitioner on 30.03.2007. It is not the case of the official respondents in the counter that the first petitioner refused to receive the notices and that the said notices were affixed on the door of the first petitioner. But, during the course of arguments by producing the record, it is contended by the learned Government Pleader that the President refused to receive the notice and therefore it was affixed on the door. The affixture of the notice is not contemplated under Rule 24-A (2) of the Rules. The manner of service must be by giving or tendering it to such a person or by sending it by registered post to their address. If such person is refused to take notice, the only course left open for the authorities is to resort the second method of service by sending it by registered post, otherwise, there is a scope of contending that the notice was tendered to the managing committee member, but they refused and therefore, such tendering of the notice is not a sufficient service of notice. If the notice is tendered and if it has not taken, the

only course left open for the respondents is to send it by registered post.

21. In the instant case, it is not the case of the respondents that they have served the notice. But, it is the case of the respondents that when the notice was tendered, the first petitioner has refused to receive the same and therefore, it was affixed on the door. I am of the opinion that affixture of notice on the door is not a sufficient service, unless it is sent by registered post.

22. Insofar as the service of notice on the second petitioner is concerned, though it is stated in the counter that notice was served on 30.03.2007, but the record goes to show that it was served on the wife of the second respondent by taking her left thumb impression. But, it is not the case of the second petitioner that the notice was served on his wife. The rule contemplates that the notice has to be given or tendered to the managing committee member alone, but not to the family member of the managing committee. So also the notice to the third petitioner was not tendered or served, but as per record the notice was given to the son of the third petitioner and therefore, I am of the opinion that the said service of notice on the third petitioner is also not in accordance with Rule 24-A (2) of the Rules.

23. In view of the aforesaid facts and circumstances of the case, it is clear that the impugned notice of no-confidence motion was not served on the petitioners giving 15 clear days as contemplated under Section 34-A (2) of the Act read with Rule 24-A (2) of the Rules and the meeting for consideration of the motion of no-confidence pursuant to the said notice cannot be held.

24. Accordingly, the writ petition is allowed setting aside the impugned notice, dated 24.03.2007. In view of the peculiar facts and circumstances of the case, and in view of the resolution of the managing committee, dated 29.01.2007 resolving that the respondents 5 and 6 are ceased to be the members of the managing committee and until such resolution is placed before the general body of the society and the general body takes a decision, the respondents 5 and 6 are not entitled to participate in the motion of no-confidence. It is for the respondents to take appropriate action in accordance with law, as indicated above. No order as to costs.

_____

V.ESWARAIAH, J.

Date:31.10.2007

Note:

L.R. copy to be marked.

B/O

ccm